

Freetown Zoning Board of Appeals

Wednesday, August 31, 2016
Freetown Elementary School Auditorium
Memorial Drive, East Freetown

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2016 SEP 29 AM 7:57

Present: James Frates, Nicolas Velozo, Bradford Paiva (associate), and James Sarcia (associate).

Call to order: James Frates called the meeting to order at 7:02 p.m. [The meeting, originally scheduled for 6:30 p.m., was delayed to 7:00 p.m. when moved from the Senior Center to the elementary school.]

Minutes of Previous Meeting

Minutes were received for April 20th, May 25th, June 8th, July 6th, July 27th, August 3rd, and August 4th.

Recording Meeting

Mr. Frates asked if anyone in the audience was recording the meeting. No-one answered in the affirmative.

Vacancy

A motion was made by Mr. Velozo, seconded by Mr. Frates, to recommend that Mr. Paiva fill the vacancy created when Walter Sawicki declined reappointment. The motion carried unanimously (2-0).

Case #566 – Edward Carreiro, et al – 17 Ridge Hill Road, Assonet

Mr. Frates began by explaining to the audience that the public hearing portion of the petition closed on August 3rd, and that there could be no public comment or additional information given tonight. Pedro Neves, 9 Alexandra Drive, Assonet, spoke and began discussing various complaints he had regarding the Excel project, vibrations to his house, and that he had called the Building Inspector's office and no-one had returned his calls. Mr. Frates stopped the discussion and said again that the public comment portion of the process had concluded on August 3rd.

Atty. Jonathan Silverstein of Kopelman & Paige, Town Counsel, explained the public hearing process. Atty. Silverstein explained that the board at its August 3rd meeting asked if there was any additional discussion from the public, and none was had. The hearing then closed, and by law, the board cannot accept any new evidence. The only way to do so would be to re-advertise, send new abutters' notices, etc., which would not be feasible in this case due to the time constraints of concluding the hearing process. Atty. Silverstein stated the chairman had given ample opportunity for discussion on August 3rd, and that it was not atypical for a hearing to close when public discussion ceased. Mr. Neves stated he could not attend August 3rd, and that he had not been notified of the hearing date and time. He began reiterating his concerns regarding the environment, OSHA, etc. Mr. Frates again said that the public comment portion of the process had concluded.

Mr. Frates asked if any members of the board had any questions, and there were none. Mr. Frates stated he still struggles with the difference between a scrap metal facility and a commercial recycling facility. He felt the current by-laws, as written, are too vague on this subject. He believed that Excel was akin to a scrap yard, whereas Republic (the town's new trash/recycling hauler) was more akin to commercial recycling.

Mr. Velozo stated that the basic question is, is this a scrap yard or a commercial recycling facility? The definition the town uses for a scrap yard is vague, and 310 C.M.R. defines commercial recycling clearly as processing and making a marketable product. He felt that Excel, as a processor, is creating a marketable product and that it comes across as a recycling facility. For lack of a clear local definition, he defaulted to the reading of the C.M.R.

Mr. Paiva had no questions or comments.

Mr. Frates stated that there are primarily two issues before the board, as outlined in the petitioners' application:

- (a) The Building Inspector's refusal to undertake enforcement in response to a request from the Petitioners pursuant to G.L. c. 40A, §7; and
- (b) The Building Permit the Building Inspector issued to Excel on May 25, 2016 by the Petitioners who reside on Alexandra Drive and High Street near the property and who are aggrieved by the Building Inspector's decision to issue a Building Permit for Excel's commercial recycling facility without a special permit.

Mr. Frates asked for a motion to overturn the Building Inspector's decision and refusal to take action. Mr. Velozo asked to have the motion clarified. Mr. Frates withdrew his request and asked for a motion.

A motion was made by Mr. Velozo to overturn the Building Inspector's decisions with regard to the Excel Recycling project. Failing a second from Mr. Paiva, the motion was seconded by Mr. Frates. Mr. Frates then asked if there was any deliberation to be had, and there was none. Mr. Frates informed the audience what the motion was, and that the board's decision must be unanimous; a majority vote is not sufficient.

A member of the audience asked if she could ask a question. Mr. Frates said she could not.

At this time, the Board proceeded to a vote:

- ♦ Mr. Frates stated that his vote was to overturn the decision of the Building Inspector.
- ♦ Mr. Velozo stated that his vote was to overturn the decision of the Building Inspector.
- ♦ Mr. Paiva stated that his vote was to uphold the decision of the Building Inspector.

Mr. Frates explained that although the vote was 2-1 in favor of overturning the decision of the Building Inspector, it was not unanimous and the Building Inspector's decision was therefore upheld.

DISPOSITION: On a 2-1 vote in favor of overturning the decision of the Building Inspector, the non-unanimous vote resulted in the decision of the Building Inspector being upheld. The petitioners' requests are therefore denied.

Any Other Business to Properly Come Before the Board

Mr. Velozo stated that he would need to recuse himself from an upcoming petition regarding 251A Middleboro Road as he may be an abutter. Messrs. Frates, Paiva, and Sarcia agreed on September 28th to open the hearing.

Meeting Adjourned

The meeting adjourned without vote at 7:35 p.m.

This is a True Record by me.

Attest: _____
Michael T. McCue, Senior Clerk